

1 RUBEN FEBO, JR.,  
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Plaintiff,

v.

10 ALAMEDA COUNTY SHERIFF'S  
11 DEPARTMENT, et al.,  
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Defendants.

7 Case No. 19-cv-00803-HSG  
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**10 ORDER OF DISMISSAL WITH LEAVE  
11 TO AMEND; ADDRESSING PENDING  
12 MOTIONS**

13 Re: Dkt. Nos. 5, 8, 11, 18  
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## **INTRODUCTION**

18 Plaintiff, a pretrial detainee at Santa Rita Jail, filed this *pro se* civil rights action pursuant  
19 to 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed *in forma pauperis* in a separate  
20 order. His complaint (Dkt. No. 1) is now before the Court for review under 28 U.S.C. § 1915A.  
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## **DISCUSSION**

### **A. Standard of Review**

19 A federal court must engage in a preliminary screening of any case in which a prisoner  
20 seeks redress from a governmental entity, or from an officer or an employee of a governmental  
21 entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and  
22 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be  
23 granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.  
24 § 1915A(b) (1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police*  
25 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

26 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
27 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not  
28 necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).  
2 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more  
3 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
4 do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.”  
5 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must  
6 proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
8 right secured by the Constitution or laws of the United States was violated; and (2) that the  
9 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.  
10 42, 48 (1988).

11 **B. Complaint**

12 The complaint will be DISMISSED with leave to amend because it violates Rule 8 of the  
13 Federal Rules of Civil Procedure. Rule 8 requires the pleader to set forth his averments in a  
14 simple, concise, and direct manner. Before undertaking to determine whether a complaint may  
15 have merit, the Court may insist upon compliance with its rules. *See McNeil v. United States*, 508  
16 U.S. 106, 113 (1993) (federal rules apply to all litigants, including prisoners lacking access to  
17 counsel); *see also Crawford–El v. Britton*, 523 U.S. 574, 597 (1998) (encouraging “firm  
18 application” of federal rules in prisoner cases). The Court simply does not have the resources to  
19 scour the 162 pages of Plaintiff’s complaint and over 200 pages of exhibits and organize the  
20 allegations contained therein in order to perform its screening duty under § 1915A. Instead, the  
21 Court must insist on Plaintiff’s compliance with Rule 8, and will accordingly dismiss the  
22 complaint with leave to file an amended complaint that contains only “a short and plain statement”  
23 of Plaintiff’s claims. *McHenry v. Renne*, 84 F.3d 1172, 1177–78 (9th Cir.) (affirming Rule 8  
24 dismissal of complaint that was “argumentative, prolix, replete with redundancy, and largely  
25 irrelevant” and providing an example of a properly-pleaded claim, which could be “read in  
26 seconds and answered in minutes”).

27 To assist Plaintiff in preparing an amended complaint, the Court reviews some of the  
28 applicable procedural rules and relevant legal principles.

1           **Rule 8.** Rule 8 of the Federal Rules of Civil Procedure requires that a complaint's  
2 allegations be short and plain; simple, concise, and direct; and describe the relief sought. Fed. R.  
3 Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v. County of Santa*  
4 *Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). In his amended complaint, Plaintiff should list the  
5 constitutional right he has, describe what and when each defendant did or failed to do, and  
6 describe how each defendant's acts or omissions caused him injury. A long pleading that goes  
7 into unnecessary detail about events not directly related to the constitutional violations suffered by  
8 the plaintiff, such as describing injuries to third parties or assaults committed by Plaintiff or  
9 relationships between third parties; that proffers personal opinion; or that speculates as to  
10 defendants' motives, will likely result in continued delay of the review required by  
11 28 U.S.C. § 1915A or an order dismissing this action pursuant to Rule 41 of the Federal Rules of  
12 Civil Procedure for violation of the Court's instructions.

13           **Rule 20.** Federal Rule 20 of the Federal Rules of Civil Procedure provides that all persons  
14 "may be joined in one action as defendants if: (A) any right to relief is asserted against them  
15 jointly, severally, or in the alternative with respect to or arising out of the same transaction,  
16 occurrence, or series of transactions or occurrences; and (B) any question of law or fact common  
17 to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). The upshot of these rules is  
18 that "multiple claims against a single party are fine, but Claim A against Defendant 1 should not  
19 be joined with unrelated Claim B against Defendant 2." *George v. Smith*, 507 F.3d 605, 607 (7th  
20 Cir. 2007). "Unrelated claims against different defendants belong in different suits . . ." *Id.* "A  
21 buckshot complaint that would be rejected if filed by a free person – say, a suit complaining that A  
22 defrauded the plaintiff, B defamed him, C punched him, D failed to pay a debt, and E infringed his  
23 copyright, all in different transactions – should be rejected if filed by a prisoner." *Id.* In the  
24 complaint, Plaintiff has named twenty-three defendants, but the claims against the defendants  
25 appear to arise out of separate series of occurrences and/or present different questions of law. In  
26 his amended complaint, Plaintiff may only allege claims that (a) arise out of the same transaction,  
27 occurrence, or series of transactions or occurrences, and (b) present questions of law or fact  
common to all defendants named therein. Plaintiff needs to choose the claims he wants to pursue

1 in this action that also meet the joinder requirements. If Plaintiff has suffered constitutional  
2 violations that may not be raised in the same action, he may bring separate actions to seek relief.

3       **Standing.** The prudential limitations of Article III standing require *inter alia* that a  
4 plaintiff assert his own rights, rather than rely on the rights or interests of third parties. *See Estate*  
5 *of McKinney v. United States*, 71 F.3d 779, 782 n.4 (9th Cir. 1995). This means that ordinarily a  
6 plaintiff does not have standing to complain about the deprivations of the constitutional rights of  
7 others. *Powers v. Ohio*, 499 U.S. 400, 410 (1991). Constitutional claims are personal and cannot  
8 be asserted vicariously. *See, e.g., Conn v. Gabbert*, 526 U.S. 286, 292 (1999) (attorney had no  
9 standing to assert § 1983 claim that prosecutor's action interfered with his client's alleged right to  
10 have him outside the grand jury room); *United States v. Ayon-Meza*, 177 F.3d 1130, 1133 (9th Cir.  
11 1999) (one cannot vicariously assert the Fourth Amendment rights of another); *Johns v. County of*  
12 *San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) (non-attorney raising due process claim under 42  
13 U.S.C. § 1983 may appear *pro se* on his own behalf, but has no authority to appear as attorney for  
14 others). Furthermore, "a litigant appearing in propria persona has no authority to represent anyone  
15 other than himself." *Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962). The complaint goes  
16 into great details about injuries suffered by other inmates (e.g., gassing, harassment, assault) and  
17 other individuals (humiliation of his father). Plaintiff is reminded that, with certain exceptions, he  
18 only has standing to bring claims for injuries that he has personally suffered.

19       **Handling of Prison Grievances.** The alleged mishandling of inmate grievances does not  
20 give rise to a separate due process claim under § 1983 because there is no constitutional right to a  
21 prison or jail administrative appeal or grievance system in California, and therefore no due process  
22 liability for failing to process or decide an inmate appeal properly. *See Ramirez v. Galaza*, 334  
23 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). However, a  
24 refusal to process an inmate grievance might have a bearing on an Eighth Amendment claim for  
25 deliberate indifference to medical needs or inmate safety. If a defendant only denied an inmate  
26 grievance about a medical problem that had already occurred and was complete (e.g., a failure to  
27 treat a broken leg that had long since healed) or a safety issue that had since been addressed, there  
28 would be no liability for a constitutional violation; however, where the problem is an ongoing

1 need and the inmate grievance seeks a remedy of the ongoing problem, Eighth Amendment  
2 liability could be based on the denial of an inmate appeal, just as it could be based on the denial of  
3 a verbal request from the inmate. *Cf. Jett v. Penner*, 439 F.3d 1091, 1098 (9th Cir. 2006)  
4 (supervisor may be liable for deliberate indifference to a serious medical need, for instance, if he  
5 or she fails to respond to prisoner's request for help).

6           **Submission of Evidence.** The Court is not a repository for the parties' evidence.  
7 Evidence (i.e., prison or medical records, witness affidavits, etc.) need not be submitted until the  
8 course of litigation brings the evidence into question (for example, on a motion for summary  
9 judgment, at trial, or when requested by the Court). At this point, the submission of evidence is  
10 premature as Plaintiff is only required to state a prima facie claim for relief. For screening  
11 purposes, the Court must assume that Plaintiff's factual allegations are true. It is unnecessary for a  
12 plaintiff to submit exhibits in support of the allegations in a complaint. Thus, if Plaintiff chooses  
13 to file an amended complaint, it is sufficient for him to simply state the facts upon which he  
14 alleges a defendant has violated his constitutional rights and refrain from submitting exhibits.

15           **C. Pending Motions**

16           The Court DENIES Plaintiff's motion requesting appointment of counsel. Dkt. No. 5.  
17 A district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an  
18 indigent civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328,  
19 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits  
20 and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal  
21 issues involved. *See id.* Neither of these factors is dispositive and both must be viewed together  
22 before deciding on a request for counsel under § 1915(e)(1). *Id.* Here, exceptional circumstances  
23 requiring the appointment of counsel are not evident. It is not yet clear what Plaintiff's claims will  
24 be, and Plaintiff has thus far ably litigated this case.

25           The Court DENIES as moot Plaintiff's motion requesting joinder of defendants (Dkt. No.  
26 8) and his motion requesting leave to file a supplemental pleading (Dkt. No. 18) because the  
27 complaint has been dismissed with leave to amend. The Court also DENIES as moot Plaintiff's  
28 requesting leave to serve a subpoena on Alameda County Sheriff Gregory Ahern (Dkt. No. 11)

1 because the complaint has been dismissed with leave to amend and it is not yet clear what  
2 Plaintiff's claims will be.

3 **CONCLUSION**

4 For the foregoing reasons, the complaint is dismissed with leave to amend to address the  
5 deficiencies identified above. Within **twenty-eight (28) days** of the date of this order, Plaintiff  
6 shall file an amended complaint. The amended complaint must include the caption and civil case  
7 number used in this order, Case No. C 19-00803 HSG (PR) and the words "AMENDED  
8 COMPLAINT" on the first page. If using the court form complaint, Plaintiff must answer all the  
9 questions on the form in order for the action to proceed.

10 If Plaintiff chooses to file an amended complaint, **Plaintiff should make it as concise as**  
11 **possible.** The amended complaint must be complete in itself without reference to any prior  
12 pleading because an amended complaint completely replaces the previous complaints. *See Ferdik*  
13 *v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the  
14 prior complaint by reference.

15 **Failure to file an amended complaint in accordance with this order in the time**  
16 **provided will result in dismissal of this action without further notice to Plaintiff.** The Clerk  
17 shall include two copies of the court's complaint with a copy of this order to Plaintiff.

18 This order terminates Dkt. Nos. 5, 8, 11, and 18.

19 **IT IS SO ORDERED.**

20 Dated: 7/24/2019

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22 HAYWOOD S. GILLIAM, JR.  
23 United States District Judge  
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